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April 19, 2010

Via E-Filing
and Hand Delivery

Ms. LaDonna Castañuela
Chief Clerk (MC 105)
Texas Commission on Environmental Quality
Bldg. F, Room 4301
Austin, Texas 78711-3087

Re: In the Matter of the Application by Brazos River Authority for Water
Rights Permit No. WRPERM 5851; TCEQ Docket No. 2005-1490-WR

Dear Ms. Castañuela:

Enclosed for filing please find an original and eight (8) copies of Protestant Texas Westmoreland Coal Company's Reply to Response to Hearing Request. Please have one copy file stamped and returned via our courier.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,


Brad B. Castleberry

JRM/jdg

ENCLOSURES

1105444

cc: Service List
Mr. Denny Kingsley
Mr. Mike Altavilla
Mr. David Dunn

TCEQ DOCKET NO. 2005-1490-WR

APPLICATION BY BRAZOS	§	BEFORE THE TEXAS COMMISSION
	§	
RIVER AUTHORITY FOR WATER	§	ON
	§	
RIGHTS PERMIT NO. WRPERM 5851	§	ENVIRONMENTAL QUALITY

REQUESTOR'S REPLY TO RESPONSE TO HEARING REQUEST

TO THE HONORABLE COMMISSIONERS:

TEXAS WESTMORELAND COAL COMPANY ("TWCC"), requestor in the above-referenced matter, files this Reply to the Executive Director's, Applicant's and OPIC's Responses to Hearing Requests and would respectfully show the Commissioners of the Texas Commission on Environmental Quality (the "Commission") the following:

I. BACKGROUND

The Brazos River Authority ("BRA") filed an application with the Commission on June 25, 2004. The application was deemed administratively complete on October 15, 2004 and notice was issued on May 13, 2005. On May 25, 2005, TWCC filed a comment to the application. On June 10, 2005, TWCC filed a formal request for contested case hearing with the Commission. On June 13, 2005, the comment period ended. Technical review of the application was completed on December 1, 2008. A draft permit was prepared on December 1, 2008 and filed with the Office of the Chief Clerk. A revised draft permit was prepared and filed with the Office of the Chief Clerk on February 11, 2010.

In accordance with 30 TEX. ADMIN. CODE §55.209(g), TWCC, as requestor, files this Reply to the responses to the hearing request filed by BRA, the ED and OPIC and requests that the Commission grant the hearing request for the reasons set forth below.

II. REPLY TO RESPONSES TO HEARING REQUEST

In compliance with 30 TEX. ADMIN. CODE §§ 55.201(c) and (d) of the Commission's rules, TWCC filed a timely hearing request in writing that was based upon issues raised in public comments during the public comment period that were not later withdrawn and included relevant contact information. BRA, the ED and OPIC all agree that TWCC's hearing request substantially complies with these requirements, and that TWCC holds water rights in the basin, including pending applications for additional water rights, and should be recognized as an affected person for purposes of requesting a contested case hearing on the Permit. Thus, TWCC respectfully requests that the Commission accept the recommendations of BRA, the ED and OPIC, and grant TWCC party status as this matter is referred to SOAH for a contested case hearing. In the interim, TWCC will continue to work with BRA to resolve its concerns regarding the Permit.

III. PRAYER FOR RELIEF

For the reasons set forth herein, TWCC respectfully requests that the Commission grant TWCC's contested case hearing request and refer this matter to SOAH for a contested case hearing.

Respectfully submitted,

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By: _____

BRAD B. CASTLEBERRY
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ATTORNEYS FOR TEXAS
WESTMORELAND COAL COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this the 19th day of April, 2010, a true and correct copy of the foregoing was sent via first-class mail, electronic mail, facsimile, or hand-delivery to the following persons:



Brad B. Castleberry

**MAILING LIST
BRAZOS RIVER AUTHORITY
DOCKET NO. 2005-1490-WR; WRPERM 5851**

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